In the Court of Appeals of the State of Alaska

Kalen Selby,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13304**

Order
Supplemental Briefing

Date of Order: **5/7/2020**

Trial Court Case No. **3AN-18-07822MO**

Before: Allard, Chief Judge, and Wollenberg and Harbison, Judges.

Kalen Selby was cited for driving with a revoked license after a trooper stopped him for speeding on the Glenn Highway and discovered that Selby's driver's license was revoked. Following a trial, a magistrate judge found Selby guilty of this infraction.[1]

Selby now appeals, raising several claims. One of Selby's claims is that "[t]he court would not see [his] motions and briefs or give [him] the chance to show evidence." Selby contends that these decisions deprived him of his due process rights under the United States and Alaska constitutions.

We have reviewed the transcript of Selby's trial, and it appears that the magistrate judge did not afford Selby an opportunity to present evidence at his trial. During Selby's cross-examination of the trooper, the court repeatedly admonished Selby to ask questions of fact, rather than questions of law. When Selby continued to make legal arguments, Selby indicated that he would ask his final questions. But instead, the

[1] AS 28.15.291(a)(2), (b)(2).

court ended the cross-examination and found Selby guilty. Although Selby later asked to make a "closing statement" and the court allowed him to do so, the court explained that it had already made its ruling. And the court never asked Selby if he had any evidence to present, or if he wished to testify on his own behalf.

In its brief, the State did not respond to Selby's assertion that he was denied the opportunity to present evidence. We acknowledge that Selby mentioned this issue only in his "Statement of Issues Presented for Review," and did not further elaborate upon this point in the "Argument" portion of his brief. But given Selby's status as a *pro se* litigant, and given the obvious nature of the apparent error in the trial court, we believe that the point is sufficiently preserved.[2] (We note that Selby's opening paperwork lodging his appeal can also be construed as including a discussion of this issue.)

Accordingly, IT IS ORDERED:

1. On or before June 8, 2020, the State shall file a response addressing Point No. 4 in Selby's "Statement of Issues Presented for Review." The State should

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[2] *See Pedersen v. Blythe*, 292 P.3d 182, 186 (Alaska 2012) (addressing an error that was not specifically raised by the appellant because he was proceeding *pro se* and the error was plain) (citing *Tracy v. State, Dep't of Health & Soc. Servs., Office of Children Servs.*, 279 P.3d 613, 618 (Alaska 2012)); *see also Wright v. Anding*, 390 P.3d 1162, 1169-70 (Alaska 2017) (providing that *pro se* pleadings should be liberally construed and that even arguments "that were neither raised before the trial court nor included in the points on appeal" may be considered if they are not dependent on new or controverted facts, are closely related to arguments made in the trial court, and "could have been gleaned from the pleadings, or if failure to address the issue would propagate plain error") (citations and internal quotations omitted); *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (recognizing that the pleadings of *pro se* litigants should be held to less stringent standards than those of lawyers).

address whether any error is structural and requires reversal of Selby's conviction. *See, e.g.*, *In re S.M.H.*, 922 N.W.2d 807, 813, 816 (Wisc. 2019) (holding that denying the defendant an opportunity to present a case-in-chief is structural error because it "adversely affects the very framework within which the trial is supposed to take place," as distinguished from the improper exclusion of the testimony of a single witness or the defendant); *see also Alvarez-Perdomo v. State*, 454 P.3d 998, 1004 (Alaska 2019) (discussing structural error).[3]

The State's brief shall be no more than 10 pages and need not comply with Appellate Rule 212, with the exception of subsections (c)(1)(A), (I), and (J).

2. Within 30 days after the State files its brief, Selby may file a responsive brief. Again, this brief shall be no more than 10 pages and need not conform to the requirements of Appellate Rule 212, with the exception of subsections (c)(1)(A) and (I).

3. After we receive the parties' supplemental briefs, we will resume our consideration of this case.

Entered at the direction of the Court.

Clerk of the Appellate Courts

/s/ M. Montgomery

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Meredith Montgomery

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[3] *Cf. Rose v. Clark*, 478 U.S. 570, 579 (1986) (holding that where, among other things, defendant "received a full opportunity to put on evidence and make argument to support his claim of innocence," challenged jury instruction did not constitute structural error).

cc: Court of Appeals Judges
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